

MEMORANDUM OF LAW

DATE: February 14, 1991

TO: Maureen Stapleton, Deputy City Manager
FROM: City Attorney
SUBJECT: City Heights Project Area Committee Closed Session

Pursuant to our conversation of February 12, 1991, I am writing this memorandum to advise you of the Brown Act requirements for closed sessions. This advice is being given to you in anticipation of a proposal by the City Heights Project Area Committee (the "PAC") that they adjourn into closed session at its February 14 meeting to discuss "pending litigation" and "personnel" issues.

Background

As you know, the basis of the Brown Act (California Government Code section 54950 et seq.) is that there be open meetings by legislative bodies in the conduct of governmental business. The PAC is required to adhere to its provisions according to Government Code section 54952.3 which holds that a "legislative body" includes:

any advisory commission, advisory committee or advisory body of a local agency, created by charter, ordinance, resolution, or by any similar formal action of a legislative body or member of a legislative body of a local agency.

The City Council took two formal actions in regards to the formation of the PAC. The first occurred when it passed a resolution calling for the election of a PAC in the proposed City Heights Redevelopment Project. The second action occurred when the City Council passed a resolution certifying the results of the election.

Closed Sessions

Generally speaking, all meetings of a legislative body must be held in open session and be properly noticed. However, there are certain permitted exceptions. Of relevance here are the "pending litigation" and "personnel" exceptions.

Pending Litigation

Government Code section 54956.9 allows for closed sessions so that a legislative body may confer with its legal counsel regarding pending litigation. Litigation is considered pending under any of the subsections of 54956.9 quoted below:

(a) Any adjudicatory proceeding before a court,

administrative body exercising its adjudicatory authority, hearing officer, or arbitrator, to which the local agency is a party, has been initiated formally.

(b)(1) A point has been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency.

(2) Based on existing facts and circumstances, the legislative body of the local agency is meeting only to decide whether a closed session is authorized pursuant to paragraph (1) of this subdivision.

(c) Based on existing facts and circumstances, the legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation.

As the PAC is not now involved in litigation, or exposed to litigation (liability), I will only touch upon the requirements for a closed session under subsection (c).

Prior to going to closed session, the legislative body must announce it is going into closed session and under what subdivision of Section 54956.9 it is doing so. No later than one week after the closed session, but preferably before, the legislative body's legal counsel shall prepare a memorandum which gives all existing facts and circumstances supporting the closed session. That memorandum is then submitted to the legislative body.

Please note that the memorandum need not be disclosed under the attorney-client privilege and upon express exemption under the Public Records Act (Government Code section 6254.1).

Finally, Government Code section 54957.2 states that a minute book may be kept by a clerk or other person designated by the legislative body to do so. The minutes are not considered a public record and shall only be available to the PAC members, or to a court of law should there be an allegation of a Brown Act violation.

Personnel Exception

Government Code section 54957 allows a legislative body to go into closed session to discuss only the appointment, employment, dismissal or evaluation of a public employee.

As the PAC does not have any employees at this time, it would appear that this exception to the Brown Act could not be used to go into closed session, and further discussion of this code section would not be relevant.

Conclusion

It appears that upon proper notice, the PAC may go into closed session to discuss potential pending litigation. A memorandum as required by Government Code section 54956.9 should be prepared. Finally, while it is not specifically required, it is suggested that the PAC designate a person to keep minutes of the closed session.

JOHN W. WITT, City Attorney

By

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Deputy City Attorney

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